

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**O'CONNOR ENTERPRISE GROUP,
INC. d/b/a EPCGROUP.NET**

VS.

**SPINDUSTRY SYSTEMS
INCORPORATED d/b/a SPINDUSTRY
INTERACTIVE, INC. and THE
FEDERAL HOME LOAN BANK OF
DES MOINES**

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CIVIL ACTION NO. _____

NOTICE OF REMOVAL

Defendant, Federal Home Loan Bank of Des Moines alleges:

1. Defendant, Federal Home Loan Bank of Des Moines, ("FHLB") is the first-served defendant in a civil action commenced on April 16, 2009, pending in the One Hundred and Twenty-Fifth (125th) Judicial District Court of Harris County, Texas, located at 201 Caroline Street, 12th Floor, Houston, Texas, 77002; Cause No. 2009-23572 entitled *O'Connor Enterprise Group, Inc. d/b/a EPCGroup.net v. Spindustry Systems Incorporated d/b/a Spindustry Intereractive, Inc. and the Federal Home Loan Bank of Des Moines*.

A. The Court has original jurisdiction over this case under the Federal Home Loan Bank Act of 1932.

2. FHLB is a federal instrumentality or a federally chartered corporation established by act of Congress under the Federal Home Loan Bank Act of 1932. 12 U.S.C. §§1421, *et. seq.* Its corporate charter statute provides that it has the power "to sue and be sued, to complain and to defend, in any court of competent jurisdiction, State or Federal." 12 U.S.C. §1432(a). This language confers original subject matter jurisdiction in federal courts. *See, e.g., American Nat'l Red Cross v. S.G.*, 505 U.S. 247, 255 (1992); *Pirelli Armstrong Tire Corp. Retiree Med. Benefits*

Trust v. Raines, 534 F.3d 779, 785 (D.C. Cir. 2008). Thus, the Court has original subject matter jurisdiction over this matter as long as FHLB is a party to it and for this reason should be removed to this Court.

B. The Court has diversity jurisdiction.

3. Service of Plaintiff's petition was first made on removing Defendant, FHLB, by serving this Defendant through the Texas Secretary of State on April 23, 2009. Plaintiff's Original Petition does not allege an amount in controversy. However, Plaintiff's lawsuit is based upon an alleged contract which provides for compensation of \$89,500. Though not specified, Plaintiff's claim for quantum meruit presumably seeks damages in a similar amount as representative of the fair and reasonable value of services allegedly performed. Plaintiff also seeks attorney's fees under Texas Civil Practice and Remedies Code Chapter 38. Therefore, this removal notice is timely filed, as it is filed within thirty (30) days of service of Plaintiff's pleading and "other paper" from which Defendant could ascertain the case is removable pursuant to 28 U.S.C. § 1446(b). The Plaintiff's Original Petition is the initial pleading setting forth the claim upon which the action is based. The following constitutes all of the process, pleadings, and orders served upon Defendant in this action:

- (a) Plaintiff's Original Petition,
- (b) Citation to FHLB

4. The action is a civil action of which this Court has original jurisdiction under Title 28 U.S.C. §1332, and is one which Defendant is entitled to remove to this Court pursuant to Title 28 U.S.C. §1441, in that the action is between citizens of different states. Plaintiff admits and alleges in its Original Petition that it is a Nevada corporation with its principal place of business in Houston, Texas; Defendant FHLB is a federal instrumentality created by Congress with its principal place of business in Iowa; and Defendant Spindustry Systems Incorporated d/b/a

Spindustry Interactive, Inc. ("Spindustry") is an Iowa corporation with its principal place of business in Clive, Iowa. Therefore, Defendants are Iowa citizens; Plaintiff is a citizen of Nevada and Texas. The above entitled action involves a controversy which is wholly between citizens of different states and therefore subject to this Court's jurisdiction. Under 28 U.S.C. §1441(a), venue of the removed action is proper in this Court as the district and division embracing the place where the state action is pending.

5. All defendants in this matter have consented to this removal by and through their counsel. Filed simultaneously herewith is Defendant Spindustry's "Notice of Consent to Removal to Federal Court." (Ex. C).

6. The matter in controversy is believed to exceed the sum of Seventy-Five Thousand and No/100 Dollars (\$75,000.00), exclusive of interest and costs. This is based upon the Plaintiff's claim of damages resulting from the alleged non-payment for services performed under the purported contract that is the basis of Plaintiff's Original Petition. Plaintiff also seeks attorney's fees under Chapter 38 of the Texas Civil Practice and Remedies Code.

7. No jury was demanded by Plaintiff in the state court action. The state court action arises out of Plaintiff's allegation that it performed work for which it has not been paid and now attempts to recover those amounts from the defendants.

8. For the above reasons, FHLB prays this matter pending in the 125th Judicial District Court of Harris County, Texas, styled Cause No. 2009-23572; *O'Connor Enterprise Group, Inc. d/b/a EPCGroup.net v. Spindustry Systems Incorporated d/b/a Spindustry Intereractive, Inc. and the Federal Home Loan Bank of Des Moines*, be removed from that Court to this Court. FHLB will promptly give adverse parties written notice of the filing of this Notice of Removal as required by 28 U.S.C. §1446(d). FHLB will promptly file a copy of this Notice of

Removal with the Harris County District Clerk, where the action is currently pending, also pursuant to 28 U.S.C. §1446(d).

Respectfully submitted,

By: /s/ Kevin D. Jewell

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Attorney-in-Charge

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ATTORNEYS FOR DEFENDANT

FEDERAL HOME LOAN BANK

OF DES MOINES

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served on all counsel of record on this the ____ day of May, 2008 in the following manner:

Gregory V. Brown
Chevazz G. Brown
Jackson Walker, LLP
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Attorneys for Plaintiff

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/s/ Kevin D. Jewell
Kevin D. Jewell

**INDEX OF DOCUMENTS FILED
WITH REMOVAL ACTION**

Exhibits:

- (a) Plaintiff's Original Petition,
- (b) Citation to FHLB
- (c) Defendant Spindustry Systems Incorporated's Notice of Consent to Removal to Federal Court
- (d) Docket Sheet (has been requested from court clerk - will supplement)
- (e) Civil Cover Sheet (has been requested from court clerk -- will supplement)

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